IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of	: Before the Examiner:
Michael Wayne Brown, et al.	: Rasha Al Aubaidi
Serial No.: 10/015,382	: Group Art Unit: 2642
Confirmation Number: 2851	:
Filed: 12/12/2001	: Amy J. Pattillo
Title: CONTROLLING HOLD QUEUE	: P.O. Box 161327
POSITION ADJUSTMENT	: Austin, Tx 78716
Atty Docket Number:	: 512-402-9820 *vox*
AUS920010827US1	

APPEAL BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Briefs - Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

     This Appeal Brief is submitted in support of the Appeal in the above-referenced application pursuant to a Notice of Appeal filed May 22, 2006 as required by 37 C.F.R. 41.31. This is an appeal from a final rejection dated February 22, 2006 of Claims 1-27, 40, and 41 of application serial number 10/015,382, filed December 12, 2001.

I. Real Party in Interest

The real party in interest in the present application is the Assignee, International Business Machines Corporation of Armonk, New York, as evidenced by the Assignment set forth at Reel 012381, Frame 0398.

II. Related Appeals and Interferences

A related appeal is pending in application serial number 10/185,383. The appeal brief in application serial number 10/185,383 was filed on August 17, 2004.

There are no additional Appeals or Interferences known to Appellant, Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. No decisions have been rendered by a court or the Board in any related applications.

III. Status of Claims

1. Status of All Claims in Application

   a. Claims Rejected: 1-27, 40 and 41

   b. Claims Allowed or Confirmed: None

   c. Claims Withdrawn from Consideration: None

   d. Claims Objected to: None

   e. Claims Cancelled: 28-39

2. Claims on Appeal

   a. The claims being appealed are: 1-27, 40, and 41

   b. The claims being appealed stand finally rejected as noted by the Examiner in the Examiner's Action dated February 22, 2006. These rejected claims which form the basis of this appeal are reproduced in the attached Appendix.

IV. Status of Amendments

Claims 1-27, 40, and 41 are presented as originally filed. The Examiner finally rejected claims 1-27, 40, and 41 in a final office action dated February 22, 2006. No additional amendments were filed after the final office action.

V. Summary of Claimed Subject Matter

Claim 1 is directed to a method for caller position management within a hold queue. (Specification, paragraphs; 0020, 0032, Figures 2 and 3, element 42). In particular an advancement token earned by a caller waiting in a hold queue is detected. (Specification, paragraphs 0034, 0112, 0136, 0140, Figure 7, elements 132, 150). The advancement token is stored for redemption in a future call by the caller (Specification, paragraphs 0033, 0100, 0103, Figure 3, element 78) according to an authenticated identifier for the caller (Specification, paragraphs 0047, 0064, 0066, 0067, 0121, Figure 4, element 75, Figure 7, elements 158, 160), wherein the future redemption of the advancement token will cause adjustment of a waiting position. (Specification, paragraphs 0088, 0124, Figure 7, elements 152, 154).

Claim 2 is directed to the method of claim 1 including a method for accessing a caller profile according to the authenticated identifier, wherein the caller profile comprises a previously earned advancement token (Specification, paragraphs 0086, 0101, 0121, 0123, 0124, Figure 2, element 50, Figure 3, element 77, Figure 4, element 75, Figure 5, element 90) and offering the caller an option of redeeming the previously earned advancement token to adjust a position of the caller within the hold queue. (Specification, paragraph 0101).

Claim 3 is directed to the method of claim 1, wherein storing the advancement token further includes a method for storing the advancement token according to the authenticated identifier at a caller profile server accessible to multiple call centers, wherein the advancement token is redeemable across a selection of the call centers for the future call. (Specification, paragraphs 0086, 0087, 0121, 0124, 0142, Figure 2, elements 16a-16n, 50, Figure 7, element 160).

Claim 4 is directed to the method of claim 1, wherein storing the advancement token further includes a method for storing the advancement token according to the authenticated identifier at a caller profile server accessible to the hold queue, wherein the advancement token is only redeemable at the hold queue for the future call. (Specification, paragraphs 0086, 0121, 0142, Figure 2, element 50, Figure 3, element 77, Figure 7, element 160).

Claim 5 is directed to the method of claim 1 including a method for redeeming a portion of the advancement token for adjusting a position of the caller within the hold queue (Specification, paragraphs 0033, 0102, 0140, Figure 7, element 154) and storing a remainder of the advancement token for the future call. (Specification, paragraphs0033, 0102, 0142, Figure 3, element 78, Figure 7, elements 156, 160).

Claim 6 is directed to the method of claim 1 wherein an expiration date is assigned to the advancement token. (Specification, paragraph 0142, Figure 7, element 158).

Claim 7 is directed to the method of claim 1 wherein the authenticated identifier for the caller is authenticated according to a voice identity of the caller. (Specification, paragraphs 0048, 0064, 0066, 0067).

Claim 8 is directed to the method of claim 1, wherein detecting an advancement token further includes a method for detecting the advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points. (Specification, paragraphs 0034, 0091, Figure 2, elements 62, 64, 66).

Claim 9 is directed to the method of claim 1, wherein redemption of the advancement token advances the caller a particular number of waiting positions. (Specification, paragraphs 0101, 0123, Figure 4, element 75).

Claim 10 is directed to the method of claim 1, wherein redemption of the advancement token advances the caller a particular amount of estimated wait time. (Specification, paragraphs 0101, 0123, Figure 4, element 75).

Claims 11-20 are directed to a call center for performing caller position management within a hold queue. The call center (Figure 2, elements 16a-16n) includes a hold queue (Figures 2 and 3, element 42) and comprises means for performing the elements described in claims 1-10, respectively. (Specification, paragraph 0020, 0105, Figure 3, element 70).

Claims 21, 22, 23, 24, 25, 26, and 27 are directed to a computer program product for performing the steps described in claims 1, 2, 3, 4, 5, 7, and 8, respectively. In particular, the specification describes a recording medium with means recorded on the

recording medium for performing the elements of claims 21-27 in the Specification, paragraphs 0151. Examples of a recording medium include:

> "recordable-type media, such as a floppy disk, a hard disk drive, a RAM, CD-ROMS, DVD-ROMs, and transmission-type media, such as digital and analog communications links, wired or wireless communications links using transmission forms, such as, for example, radio frequency and light wave transmissions" (Specification, paragraph 0152).

In addition, the recording medium may "take the form of coded formats that are decoded for actual use in a particular data processing system" (Specification, paragraph 0151). In one example, controller 70 of Figure 3 controls the management of caller position within a hold queue and includes computer resources, such as a processor, memory, a data storage system, system software, and application software, where the memory, for example, may be a recording medium recorded with the means described in claims 21-27 (Specification, paragraph 0105).

Claim 40 is directed to a method for call queue management of advancement tokens. (Specification, paragraphs 0021, 0032, Figures 2 and 3, element 42). A call is received from a caller at a hold queue, wherein an identity of the caller is authenticated. (Specification, paragraphs 0047, 0064, 0066, 0067, 0121, Figure 6, element 122, Figure 7, element 134). A caller profile is accessed according to the identity of the caller, wherein the caller profile comprises at least one previously earned advancement token. (Specification, paragraphs 0086, 0121, 0123, Figure 4, element 75, Figure 5, element 90). A caller is offered an option of redeeming the previously earned advancement token for adjustment of a position of the caller in the hold queue. (Specification, paragraphs 0101, 0140, Figure 7, element 152).

Claim 41 is directed to a method for call queue management. (Specification paragraph 0032, Figures 2 and 3, element 42). A call is received from a caller at a hold queue, wherein an identity of the caller is authenticated. (Specification, paragraphs 0047, 0064, 0066, 0067, 0121, Figure 6, element 122, Figure 7, element 134). A characteristic of the caller is detected for which an automatic advancement token is granted. (Specification, paragraphs 0036, 0092, 0122). A position of the caller is automatically adjusted in the hold queue according to the automatic advancement token. (Specification, paragraph 0033 Figure 7, element 154).

VI. Grounds of Rejection to be Reviewed on Appeal

1. Claims 1-6, 8-16, 19-25, 27, 40 and 41 are rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Patent 6,826,276).

2. Claims 7, 17, and 26 are rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Patent 6,826,276).

3. Claims 1-6, 8-16, 19-25, 27, 40 and 41 are rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Publication 2003/0103619).

4. Claims 7, 17, and 26 are rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Publication 2003/0103619).

VII. Argument

1.   35 U.S.C. 102(e), Alleged Anticipation, Claims 1-6, 8-16, 19-25, 27, 40 and 41, Brown '276

The Final Office Action rejects claims 1-6, 8-16, 19-25, 27, 40 and 41 under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Patent 6,826,276) (hereafter referred to as Brown '276). [Office Action, p. 3] "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). Furthermore the reference must be an enabling disclosure of each and every element as set forth in the claim. *In re Hoecksma*, 158 USPQ 596, 600 (CCPA 1968); *In re LeGrive*, 133 USPQ 365, 372 (CCPA 1962). The rejection is respectfully traversed. Appellants respectfully assert that because Brown '276 does not teach each and every element of claims 1-6, 8-16, 19-25, 27, 40 and 41 or enable each and every element of these claims, these claims are not anticipated, the rejection should be withdrawn, and the claims should be allowed.

In the rejection of claims 1-27 and 40-41 under Brown (US Patent 6,826,276), the Examiner states:

> The disclosure is substantially the same as Brown reference (see Col. 5, lines 32-42). [Final Office Action, p. 3]

Appellants respectfully assert that Brown '276 does not teach each and every element of claims 1-6, 8-16, 19-25, 27, 40 and 41 because Brown '276 does not teach caller identity authentication. In addition, Appellants respectfully assert that while portions of the specification and figures of the present application may be similar to Brown '276 the specification and figures are not substantially the same as Brown '276 and that regardless of whether there are similarities, Brown '276 does not teach each and every element of claims 1-6, 8-16, 19-25, 27, 40 and 41.

Claims 1, 11, 21, 40, and 41

Independent claims 1, 11, 21, 40 and 41 all teach the element of an authenticated identifier for a caller or caller identity authentication as follows:

Claim 1: storing said advancement token for redemption in a future call by said caller according to an **authenticated identifier for said caller**, wherein future redemption of said advancement token will cause adjustment of a waiting position.

Claim 11: means for storing said advancement token for redemption in a future call by said caller according to an **authenticated identifier for said caller**, wherein future redemption of said advancement token will cause adjustment of a waiting position.

Claim 21: means, recorded on said recording medium, for storing said advancement token for redemption in a future call by said caller according to an **authenticated identifier for said caller**, wherein future redemption of said advancement token will cause adjustment of a waiting position.

Claim 40: receiving a call from a caller at a hold queue, wherein an **identity of said caller is authenticated**;

Claim 41: receiving a call from a caller at a hold queue, wherein an **identity of said caller is authenticated**;

The Examiner cites Brown (US Patent 6,826,276), col. 5, lines 32-42 as support for Brown teaching each and every element of claims 1, 11, 21, 40, and 41. [Final Office Action, p. 3] Brown (US Patent 6,826,276), col. 5, lines 32-42 reads:

In addition, caller profile server 24 includes a caller profile database 27. Caller profile database 27 preferably includes multiple caller profiles stored according to caller ID. Caller profiles may include personal information, service preferences, product and service purchase records, previous hold activities, current wait history, and other information that is provided by a caller or monitored by a call center and transferred to a call profile server 24. In addition, a caller profile may include preferences for types of token advancement system and records of extra tokens earned by the caller for redemption in future calls…

In addition, in the Examiner's remarks in the Final Office Action, the Examiner states that "Brown et al. (patent 6,826,276) specifically teach several authentication steps. Brown et al. teach that a caller ID will be compared with the caller profile database at step 98 (see col. 9, lines 1-4 and Figure 6). Then, at step 100, a determination will be made of whether a caller ID matches a caller profile or not (Fig. 6). Thus, authenticating the caller in Brown et al. is a necessary feature especially in the scenario of redeeming the advancement tokens in order to prevent unauthorized callers from redeeming these advancement tokens." [Final Office Action, p. 4]

Appellants respectfully assert that Brown '276 does not teach or enable <u>an authenticated identifier for said caller</u> or <u>an identity of said caller is authenticated</u> for multiple reasons.

First, Appellants respectfully assert that Brown '276 does not teach or enable <u>an authenticated identifier for said caller</u> or <u>an identity of said caller is authenticated</u> because the specification of Brown '276, when viewed as a whole, does not teach detecting an identity of a caller. Appellants respectfully disagree with the Examiner's characterization of the teachings of Brown '276 as teaching "several authentication steps". Appellants have carefully reviewed Brown '276 and respectfully asset that when Brown '276 is viewed as a whole, Brown '276 describes comparing a caller ID with the caller profiles, where each caller profile is associated with a caller ID, and that the caller ID represents a telephone number from which a caller places the call. *Brown '276*, Figure 4, element 50, Figure 6, elements 98, 100, col. 5, lines 32-42, col. 7, lines 62-66, col. 9, lines 1-4. Matching a telephone number of a call with a profile associated with that telephone number does not describe identifying the actual identity of a caller, much less authenticating the identity of the caller, but merely describes identifying a profile previously stored in associated with a telephone number.

Second, Appellants respectfully assert that Brown '276 does not teach or enable <u>an authenticated identifier for said caller</u> or <u>an identity of said caller is authenticated</u> because when the claims are given their broadest reasonable interpretation consistent with the specification, identifying a caller profile associated with a caller ID, as described in Brown '276, does not teach authenticating an identity of a caller. Appellants note that during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and "customary" meaning of the terms of the claims; the ordinary and customary meaning of terms may be evidenced in dictionaries and treatises. *Ferguson Beauregard/Logic Controls v. Mega*

Systems, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003); *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2s 1812. Appellants respectfully assert that in examining claims 1, 11, 21, 40, and 41 with the broadest reasonable interpretation consistent with the specification and consistent with the interpretation that those skilled in the art would reach, it is clear that the caller profile associated with a telephone number of Brown '276 and accessing a caller profile associated with the telephone number not teach or suggest an authenticated identity of a caller.

First, as to the definition of "caller ID", Princeton University's online dictionary defines "caller ID" as "a small display that will show you the telephone number of the party calling you." *WordNet ® 2.0, © 2003 Princeton University.* This definition of the term "caller ID" as the telephone number of the calling party, is consistent with "caller ID" as used in Brown '276. In particular, Figure 4, element 50 and col. 7, lines 62-66 of Brown '276 identifies a first caller ID as telephone number 512444000 and a second caller ID by a telephone number 512555000." Appellants assert that the definitions of "caller ID" clearly show that the term is customarily used by those skilled in the relevant art of telephony systems as describing the calling party's telephone line number.

Second, as to the definition of "authentication", in one example, the Free On-Line Dictionary of Computing defines authentication as "the verification of the identity of a person or process." *The Free On-line Dictionary of Computing, copyright 1993-2005 Denis Howe.* In another example, Princeton University's online dictionary, defines "authentication" as "validating the authenticity of something or someone." *WordNet ® 2.0, © 2003 Princeton University.* In yet another example, the Microsoft Computer Dictionary defines "authentication" as "In a multiuser or network operating system, the process by which a system validates a user's logon information." (Microsoft Computer Dictionary, 5th Edition, p. 42). Appellants assert that these definition of "authentication" clearly show that the term is customarily used by those skilled in the relevant art as requiring both <u>identifying</u> an identity a person and <u>verifying</u> the identity of the person.

In addition, these definitions clearly show that "authentication" in the context of a telephony system requires a step of verifying the actual identity of a caller and these definitions are consistent with the use of "authentication" throughout the specification.

In particular, paragraphs 0047 and 0048 (lines 1-3) of the specification of the present invention describes:

> In accord with an advantage of the present invention, as will be further described, the identity of both the caller and the callee may be authenticated by one of telephony devices 8a-8n, PSTN 10, or by telco application server 22. By authenticating the actual identity of the person making a phone call and the person receiving the phone call, rather than the identification of a device from which a caller is made and received, an enhanced specialization of services to subscribers may be performed.
> An authentication service within telco application server 22 may include identification and verification of the identity of a caller and/or callee of a particular call.

In addition, as to teaching the authenticated caller identifier, paragraph 0066 of the specification of the present invention reads:

> Where IP 17 authenticates the identity of a caller (e.g. the subscriber placing a call), a voice identifier (VID) representing the authenticated caller identity is transferred as a signal for identifying the caller. In addition, where IP 17 authenticates the identity of a callee (e.g. the subscriber receiving a call), a reverse VID (RVID) including the callee identity is transferred as a signal for identifying the callee.

Thus, the specification describes authentication with respect to both identification and verification and describes that once a caller identity is authenticated, a VID is created that represents the authenticated caller identity.

Therefore, in view of the ordinary and customary meanings of "caller ID" and "authentication", Appellants respectfully assert that it is clear that comparing a telephone number for a call (caller ID) with a database of caller profiles each associated with telephone numbers, as described in Brown '276, does not teach or enable identifying the actual identity of the caller, but merely identifies a caller profile previously associated with the telephone number used. Further, merely because Brown '276 describes comparing the caller ID with caller profiles and locating a caller profile previously associated with a caller ID, locating a caller profile associated with a caller ID does not teach or enable verifying the actual identity of the caller. In contrast, claims 1, 11, 21, 40, and 41 teach an authenticated identifier for a caller or that the identity of a caller is authenticated, where authentication requires both identifying the identity of the caller and verifying that the caller is the person identified. In conclusion, because Brown '276 does

not teach or enable <u>an authenticated identifier for a caller</u> or <u>the identity of a caller is</u>
<u>authenticated,</u> Brown '276 does not teach or enable at least one element of claims 1, 11,
21, 40, and 41 and the claims should be allowed.

In addition, Appellants note that the Examiner's ground for rejection of claims 1,
11, 21, 40, and 41 is that the "disclosure is substantially the same as [the] Brown
reference." Appellants respectfully assert that the Examiner's assertion is incorrect
because Brown '276 does not include any disclosure of an authenticated caller identifier
or where an identity of a caller is authenticated and in particular does not include any
disclosure substantially the same as paragraphs 0047, 0048, and 0066 cited above. In
particular, Brown '276 does not teach or reference a VID representing an authenticated
caller identity and in particular does not teach paragraphs 0041-0081 and 0125-0131 and
Figures 1, 5, and 7. Further, even if portions of the present application are substantially
the same as Brown '276, for a claim to be rejected under 35 USC 102(b), ALL the
claimed features must be disclosed by the prior art; clearly Brown '276 does not disclose
<u>an authenticated caller identifier</u> or <u>an identity of a caller that is authenticated</u>. Therefore,
in view of the foregoing, Appellants respectfully request withdrawal of the rejection
under Brown '276 and allowance of the claims.

Claims 2-6, 8-10, 12-16, 19-20, 22- 25, and 27

Regarding claims 2-6, 8-10, 12-16, 19-20, 22- 25, and 27, Appellants respectfully
propose that because Brown '276 does not anticipate independent claims 1, 11, and 21
upon which these dependent claims rely, Brown '276 also does not anticipate dependent
claims 2-6, 8-10, 12-16, 19-20, 22- 25, and 27 and the dependent claims should be
allowed.

2.   35 U.S.C. 102(e), Alleged Anticipation, Claims 7, 17, and 26, Brown '276

The Final Office Action rejects claims 7, 17, and 26 under 35 U.S.C. §102(e) as
being allegedly anticipated by Brown et al. (US Patent 6,826,276) (hereafter referred to
as Brown '276). [Office Action, p. 3]

First, regarding claims 7, 17, and 26, Appellants respectfully propose that because
Brown '276 does not anticipate independent claims 1, 11, and 21 upon which these

dependent claims rely, Brown '276 also does not anticipate dependent claims 7, 17, and 26 and the dependent claims should be allowed.

Second, regarding claims 7, 17, and 26, Appellants respectfully assert that Brown '276 does not anticipate claims 7, 17, and 26 and therefore Appellants traverse the rejection. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). Furthermore the reference must be an enabling disclosure of each and every element as set forth in the claim. *In re Hoecksma*, 158 USPQ 596, 600 (CCPA 1968); *In re LeGrive*, 133 USPQ 365, 372 (CCPA 1962).

Claim 7, which is representative in subject matter as claims 17 and 26, reads as follows:

> 7.   The method for caller position management within a hold queue according to claim 1, wherein said authenticated identifier for said caller is authenticated according to a voice identity of said caller.

The Examiner cites Brown (US Patent 6,826,276), col. 5, lines 32-42 as support for Brown teaching each and every element of claims 7, 17, and 26. [Final Office Action, p. 3] Brown (US Patent 6,826,276), col. 5, lines 32-42 reads:

> In addition, caller profile server 24 includes a caller profile database 27. Caller profile database 27 preferably includes multiple caller profiles stored according to caller ID. Caller profiles may include personal information, service preferences, product and service purchase records, previous hold activities, current wait history, and other information that is provided by a caller or monitored by a call center and transferred to a call profile server 24. In addition, a caller profile may include preferences for types of token advancement system and records of extra tokens earned by the caller for redemption in future calls...

Appellants asserted, with regard to claims 1, 11, and 21, that Brown '276 merely describes comparing a caller ID, which is a telephone line number, with multiple caller profiles, to identify a caller profile previously stored in association with the telephone line number. Appellants respectfully assert that even if these steps in Brown '276 were to describe authentication, no portion of Brown '276 refers to verifying an identity of a caller based on the caller's voice. *Brown '276*, Figure 4, element 50, Figure 6, elements

98, 100, col. 5, lines 32-42, col. 7, lines 62-66, col. 9, lines 1-4. In contrast, claims 7, 17, and 26 teach that an authenticated identifier for a caller is authenticated according to a voice identity of the caller. Therefore, because Brown '276 does not teach voice based authentication of a caller, Brown '276 does not teach each and every element of claims 7, 17, and 26 and the claims should be allowed.

In addition, Appellants respectfully assert that when claims 7, 17, and 26 are given their broadest reasonable interpretation consistent with the specification, authentication by voice identity, or voice authentication, requires a comparison of the caller's voice with a previous imprint of the caller's voice to verify the caller's identity by matching caller's voice with the imprint. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and "customary" meaning of the terms of the claims; the ordinary and customary meaning of terms may be evidenced in dictionaries and treatises. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003); *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2s 1812. As previously asserted with respect to claims 1, 11, and 21, in view of multiple dictionary definitions which are representative of the "ordinary" and "customary" meaning given to "authentication" by one with skill in the relevant art, Appellants assert that these definition of "authentication" of a person requires both <u>identifying</u> an identity a person and <u>verifying</u> the identity of the person. Further, in view of the definitions of "authentication" an authenticated identity of a caller requires identifying an identity of a caller and then verifying that the actual identity of the caller matches the identified identity of the caller. Paragraph 0048 of the present application further describes an authentication service that includes both "identification and verification of the identity of a caller and/or callee of a particular call" and that the service "may require that subscribers provide voice samples when setting up a

subscription. The stored voice samples may then be compared against voice samples received for a particular call in order to authenticate the identity of a current caller or callee of the particular call." In addition, paragraphs 0064 and 0066 provide additional examples of performing voice authentication through identification and verification by first matching the name or spoken identity of the caller with a subscriber name and identifier and then verifying the audio signal matches a voice imprint for the subscriber. Appellants respectfully assert that while the present application clearly teaches and enables voice authentication, Brown '276 does not point to authentication, whether by voice or other means, and therefore Brown '276 does not teach each and every element of claims 7, 17, and 26 and the claims should be allowed.

3.   35 U.S.C. 102(e), Alleged Anticipation, Claims 1-6, 8-16, 19-25, 27, 40 and 41, Brown Pub 2003

The Final Office Action rejects claims 1-6, 8-16, 19-25, 27, 40 and 41 under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Publication 2003/0103719) (hereafter referred to as Brown Pub 2003). [Office Action, p. 3] "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). Furthermore the reference must be an enabling disclosure of each and every element as set forth in the claim. *In re Hoecksma*, 158 USPQ 596, 600 (CCPA 1968); *In re LeGrive*, 133 USPQ 365, 372 (CCPA 1962). The rejection is respectfully traversed. Appellants respectfully assert that because Brown Pub 2003 does not teach each and every element of claims 1-6, 8-16, 19-25, 27, 40 and 41 or enable each and every element of these claims, these claims are not anticipated, the rejection should be withdrawn, and the claims should be allowed.

In the rejection of claims 1-6, 8-16, 19-25, 27, 40 and 41 under Brown (US Patent 6,826,276), the Examiner states:

> The disclosure is substantially the same as Brown et al. reference (see abstract of the invention and P. 1). [Final Office Action, p. 3]

Appellants respectfully assert that Brown Pub 2003 does not teach each and every element of claims 1-6, 8-16, 19-25, 27, 40 and 41 because Brown Pub 2003 does not

teach caller identity authentication. In addition, Appellants respectfully assert that while portions of the specification and figures of the present application may be similar to Brown Pub 2003 the specification and figures are not substantially the same as Brown Pub 2003 and that regardless of whether there are similarities, Brown Pub 2003 does not teach each and every element of claims 1-6, 8-16, 19-25, 27, 40 and 41.

Claims 1, 11, 21, 40, and 41

Independent claims 1, 11, 21, 40 and 41 all teach the element of an authenticated identifier for a caller or caller identity authentication as follows:

> Claim 1: storing said advancement token for redemption in a future call by said caller according to an **authenticated identifier for said caller**, wherein future redemption of said advancement token will cause adjustment of a waiting position.
> Claim 11: means for storing said advancement token for redemption in a future call by said caller according to an **authenticated identifier for said caller**, wherein future redemption of said advancement token will cause adjustment of a waiting position.
> Claim 21: means, recorded on said recording medium, for storing said advancement token for redemption in a future call by said caller according to an **authenticated identifier for said caller**, wherein future redemption of said advancement token will cause adjustment of a waiting position.
> Claim 40: receiving a call from a caller at a hold queue, wherein an **identity of said caller is authenticated**;
> Claim 41: receiving a call from a caller at a hold queue, wherein an **identity of said caller is authenticated**;

The Examiner rejects claims 1, 11, 21, 40, and 41 on the grounds that "the disclosure is substantially the same as Brown et al. reference (see abstract of the invention and P. 1).

[Final Office Action, p. 3] Brown Pub 2003, abstract reads:

> A method, system, and program for allowing callers to adjust in position within a call hold queue are provided. An advancement token earned by a caller is detected at a calling queue. The position of the caller within the calling queue is adjusted, in response to redemption of the advancement token, such that the caller is allowed control over the position within the calling queue by earning advancement tokens. In particular, a caller may earn advancement tokens by participation in competitions or surveys or by redemption of membership points.

In addition, P. 1 of Brown Pub 2003, as cited by the Examiner, assuming that P. 1 refers to the entire first page of Brown Pub 2003, includes a description of the related art and a summary of the invention.

Appellants respectfully assert, however, that Brown Pub 2003 does not teach or enable an authenticated identifier for said caller or an identity of said caller is authenticated for multiple reasons.

First, Appellants respectfully assert that Brown Pub 2003 does not teach or enable an authenticated identifier for said caller or an identity of said caller is authenticated because the specification of Brown Pub 2003, when viewed as a whole, does not teach authenticating an identity of a caller. The abstract of Brown Pub 2003, as cited by the Examiner, merely refers to a caller, but makes no mention of authenticating the identity of the caller. With reciting the entirety of page 1 of Brown Pub 2003, as cited by the Examiner, Appellants note that page 1 also merely refers to a caller, but makes no mention of authenticating the identity of the caller. Further, no portion of the specification of Brown Pub 2003 describes authenticating an identity of a caller. Therefore, because Brown Pub 2003 does not in fact teach or enable authenticating an identity of a caller, Appellants respectfully assert that Brown Pub 2003 does not teach and enable all the elements of claims 1, 11, 21, 40 and 41 and the claims should be allowed.

Second, Appellants respectfully assert that Brown Pub 2003 does not teach or enable an authenticated identifier for said caller or an identity of said caller is authenticated because when the claims are given their broadest reasonable interpretation consistent with the specification, authenticated identifiers require identifying an identity of a caller and verifying that the caller's actual identity matches the identified identity and Brown Pub 2003 does not teach identifying and verifying an identity of a caller. Appellants note that during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). It is the use of the words in the context of the written description

and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and "customary" meaning of the terms of the claims; the ordinary and customary meaning of terms may be evidenced in dictionaries and treatises. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003); *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2s 1812. Appellants respectfully assert that in examining claims 1, 11, 21, 40, and 41 with the broadest reasonable interpretation consistent with the specification and consistent with the interpretation that those skilled in the art would reach, it is clear that an authenticated identifier or identity of a caller that is authenticated requires both identifying and verifying the actual identity of a caller.

In one example, the Free On-Line Dictionary of Computing defines "authentication" as "the verification of the identity of a person or process." *The Free On-line Dictionary of Computing, copyright 1993-2005 Denis Howe.* In another example, Princeton University's online dictionary, defines "authentication" as "validating the authenticity of something or someone." *WordNet ® 2.0, © 2003 Princeton University.* In yet another example, the Microsoft Computer Dictionary defines "authentication" as "In a multiuser or network operating system, the process by which a system validates a user's logon information." (Microsoft Computer Dictionary, 5th Edition, p. 42). Appellants assert that these definition of "authentication" clearly show that the term is customarily used by those skilled in the relevant art as requiring both <u>identifying</u> an identity a person and <u>verifying</u> the identity of the actual person matches the identified identity.

In addition, these definitions clearly show that "authentication" in the context of a telephony system requires a step of verifying the actual identity of a caller and these definitions are consistent with the use of "authentication" throughout the specification. In particular, paragraphs 0047 and 0048 (lines 1-3) of the specification of the present invention describes:

> In accord with an advantage of the present invention, as will be further described, the identity of both the caller and the callee may be authenticated by one of telephony devices 8a-8n, PSTN 10, or by telco application server 22. By authenticating the actual identity of the person making a phone call and the person receiving the phone call, rather than the identification of a device from which a caller is made and received, an enhanced specialization of services to subscribers may be performed.

> An authentication service within telco application server 22 may include identification and verification of the identity of a caller and/or callee of a particular call.

In addition, as to teaching the authenticated caller identifier, paragraph 0066 of the specification of the present invention reads:

> Where IP 17 authenticates the identity of a caller (e.g. the subscriber placing a call), a voice identifier (VID) representing the authenticated caller identity is transferred as a signal for identifying the caller. In addition, where IP 17 authenticates the identity of a callee (e.g. the subscriber receiving a call), a reverse VID (RVID) including the callee identity is transferred as a signal for identifying the callee.

Thus, the specification describes authentication with respect to both identification and verification and describes that once a caller identity is authenticated, a VID is created that represents the authenticated caller identity.

Therefore, in view of the ordinary and customary meanings of "authentication" Appellants respectfully assert that an authenticated identifier for a caller or the identity of a caller is authenticated requires identifying the actual identity of the caller. There is no indication, without Brown Pub 2003, that the generic reference to the term "caller" refers to an identifier for the caller that includes the caller's identity, which has been further verified to be the same identity as the actual caller. In conclusion, because Brown '276 does not teach or enable an authenticated identifier for a caller or the identity of a caller is authenticated, Brown Pub 2003 does not teach or enable at least one element of claims 1, 11, 21, 40, and 41 and the claims should be allowed.

In addition, Appellants note that the Examiner's ground for rejection of claims 1, 11, 21, 40, and 41 is that the "disclosure is substantially the same as [the] Brown reference." Appellants respectfully assert that the Examiner's assertion is incorrect because Brown Pub 2003 does not include any disclosure of an authenticated caller identifier or where an identity of a caller is authenticated and in particular does not include any disclosure substantially the same as paragraphs 0047, 0048, and 0066 cited above. In particular, Brown Pub 2003 does not teach or reference a VID representing an authenticated caller identity and in particular does not teach paragraphs 0041-0081 and 0125-0131 and Figures 1, 5, and 7. Further, even if portions of the present application are substantially the same as Brown Pub 2003, for a claim to be rejected under 35 USC

102(b), ALL the claimed features must be disclosed by the prior art; clearly Brown Pub 2003 does not disclose <u>an authenticated caller identifier</u> or <u>an identity of a caller that is authenticated</u>. Therefore, in view of the foregoing, Appellants respectfully request withdrawal of the rejection under Brown '276 and allowance of the claims.

Claims 2-6, 8-10, 12-16, 19-20, 22- 25, and 27

      Regarding claims 2-6, 8-10, 12-16, 19-20, 22- 25, and 27, Appellants respectfully propose that because Brown Pub 2003 does not anticipate independent claims 1, 11, and 21 upon which these dependent claims rely, Brown Pub 2003 also does not anticipate dependent claims 2-6, 8-10, 12-16, 19-20, 22- 25, and 27 and the dependent claims should be allowed.

4.   35 U.S.C. 102(e), Alleged Anticipation, Claims 7, 17, and 26, Brown Pub 2003

      The Final Office Action rejects claims 7, 17, and 26 under 35 U.S.C. §102(e) as being allegedly anticipated by Brown et al. (US Publication 2003/0103719) (hereafter referred to as Brown Pub 2003). [Office Action, p. 3]

      First, regarding claims 7, 17, and 26, Appellants respectfully propose that because Brown Pub 2003 does not anticipate independent claims 1, 11, and 21 upon which these dependent claims rely, Brown Pub 2003 also does not anticipate dependent claims 7, 17, and 26 and the dependent claims should be allowed.

      Second, regarding claims 7, 17, and 26, Appellants respectfully assert that Brown Pub 2003 does not anticipate claims 7, 17, and 26 and therefore Appellants traverse the rejection. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). Furthermore the reference must be an enabling disclosure of each and every element as set forth in the claim. *In re Hoecksma*, 158 USPQ 596, 600 (CCPA 1968); *In re LeGrive*, 133 USPQ 365, 372 (CCPA 1962).

      Claim 7, which is representative in subject matter as claims 17 and 26, reads as follows:

7.   The method for caller position management within a hold queue according to claim 1, wherein said authenticated identifier for said caller is authenticated according to a voice identity of said caller.

The Examiner rejects claims 7, 17, and 26 on the grounds that "the disclosure is substantially the same as Brown et al. reference (see abstract of the invention and P. 1).

[Final Office Action, p. 3] Brown Pub 2003, abstract reads:

> A method, system, and program for allowing callers to adjust in position within a call hold queue are provided. An advancement token earned by a caller is detected at a calling queue. The position of the caller within the calling queue is adjusted, in response to redemption of the advancement token, such that the caller is allowed control over the position within the calling queue by earning advancement tokens. In particular, a caller may earn advancement tokens by participation in competitions or surveys or by redemption of membership points.

Appellants asserted, with regard to claims 1, 11, and 21, that Brown Pub 2003 does not refer to authenticating the identity of a caller, and merely refers to a "caller" in general. In addition, Appellants respectfully assert, with regards to claims 7, 17, and 26 that no portion of Brown Pub 2003 refers to verifying an identity of a caller based on the caller's voice. In contrast, claims 7, 17, and 26 teach that an authenticated identifier for a caller is authenticated according to a voice identity of the caller. Therefore, because Brown Pub 2003 does not teach voice based authentication of a caller, Brown Pub 2003 does not teach each and every element of claims 7, 17, and 26 and the claims should be allowed.

In addition, Appellants respectfully assert that when claims 7, 17, and 26 are given their broadest reasonable interpretation consistent with the specification, authentication by voice identity, or voice authentication, requires a comparison of the caller's voice with a previous imprint of the caller's voice to verify the caller's identity by matching caller's voice with the imprint. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that

accurately reflects both the "ordinary" and "customary" meaning of the terms of the claims; the ordinary and customary meaning of terms may be evidenced in dictionaries and treatises. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003); *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2s 1812. As previously asserted with respect to claims 1, 11, and 21, in view of multiple dictionary definitions which are representative of the "ordinary" and "customary" meaning given to "authentication" by one with skill in the relevant art, Appellants assert that these definition of "authentication" of a person requires both <u>identifying</u> an identity a person and <u>verifying</u> the identity of the person. Further, in view of the definitions of "authentication" an authenticated identity of a caller requires identifying an identity of the caller and then verifying that the actual identity of the caller matches the identified identity. Paragraph 0048 of the present application further describes an authentication service that includes both "identification and verification of the identity of a caller and/or callee of a particular call" and that the service "may require that subscribers provide voice samples when setting up a subscription. The stored voice samples may then be compared against voice samples received for a particular call in order to authenticate the identity of a current caller or callee of the particular call." In addition, paragraphs 0064 and 0066 provide additional examples of performing voice authentication through identification and verification by first matching the name or spoken identity of the caller with a subscriber name and identifier and then verifying the audio signal matches a voice imprint for the subscriber. Appellants respectfully assert that while the present application clearly teaches and <u>enables</u> voice authentication, Brown Pub 2003 does not point to authentication, whether by voice or other means, and therefore Brown Pub 2003 does not teach each and every element of claims 7, 17, and 26 and the claims should be allowed.

CONCLUSION

It is therefore respectfully requested that the Examiner's rejection of claims 1-27, 40 and 41 under 35 USC 103(a) be reversed and the claims allowed.

Please charge the fee of $500.00 for submission of an Appeal Brief under 37 CFR 41.20(b)(2) to IBM Corporation Deposit Account No. 09-0447. No additional filing fee is believed to be necessary; however, in the event that any additional fee is required, please charge it to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

on 7/24/2006

Amy J. Pattillo
Attorney for Appellants
Reg. No 46,983
P.O. Box 161327
Austin, Texas 78716
vox (512) 402-9820
fax (512) 306-0417

VIII. Claims Appendix

The Claims involved in the Appeal are as follows:

1.   A method for caller position management within a hold queue comprising:

detecting an advancement token earned by a caller waiting in a hold queue; and

storing said advancement token for redemption in a future call by said caller according to an authenticated identifier for said caller, wherein future redemption of said advancement token will cause adjustment of a waiting position.

2.   The method for caller position management within a hold queue according to claim 1, further comprising:

accessing a caller profile according to said authenticated identifier, wherein said caller profile comprises a previously earned advancement token; and

offering said caller an option of redeeming said previously earned advancement token to adjust a position of said caller within said hold queue.

3.   The method for caller position management within a hold queue according to claim 1, wherein storing said advancement token further comprises:

storing said advancement token according to said authenticated identifier at a caller profile server accessible to a plurality of a call centers, wherein said advancement token is redeemable across a selection of said plurality of call centers for said future call.

4.   The method for caller position management within a hold queue according to claim 1, wherein storing said advancement token further comprises:

storing said advancement token according to said authenticated identifier at a caller profile server accessible to said hold queue, wherein said advancement token is only redeemable at said hold queue for said future call.

5.   The method for caller position management within a hold queue according to claim 1, further comprising:

redeeming a portion of said advancement token for adjusting a position of said caller within said hold queue; and

storing a remainder of said advancement token for said future call.

6.   The method for caller position management within a hold queue according to claim 1, wherein an expiration date is assigned to said advancement token.

7.   The method for caller position management within a hold queue according to claim 1, wherein said authenticated identifier for said caller is authenticated according to a voice identity of said caller.

8.   The method for caller position management within a hold queue according to claim 1, wherein said detecting an advancement token further comprises:

detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points.

9.   The method for caller position management within a hold queue according to claim 1, wherein redemption of said advancement token advances said caller a particular number of waiting positions.

10.   The method for caller position management within a hold queue according to claim 1, wherein redemption of said advancement token advances said caller a particular amount of estimated wait time.

11.   A system for caller position management within a hold queue comprising:

a call center comprising a hold queue;

means for detecting an advancement token earned by a caller waiting in said hold queue; and

means for storing said advancement token for redemption in a future call by said caller according to an authenticated identifier for said caller, wherein future redemption of said advancement token will cause adjustment of a waiting position.

12.   The system for caller position management within a hold queue according to claim 11, further comprising:

means for accessing a caller profile according to said authenticated identifier, wherein said caller profile comprises a previously earned advancement token; and

means for offering said caller an option of redeeming said previously earned advancement token to adjust a position of said caller within said hold queue.

13.   The system for caller position management within a hold queue according to claim 11, wherein said means for storing said advancement token further comprises:

means for storing said advancement token according to said authenticated identifier at a caller profile server accessible to a plurality of a call centers, wherein said advancement token is redeemable across a selection of said plurality of call centers for said future call.

14.   The system for caller position management within a hold queue according to claim 11, wherein said means for storing said advancement token further comprises:

        means for storing said advancement token according to said authenticated identifier at a caller profile server accessible to said hold queue, wherein said advancement token is only redeemable at said hold queue for said future call.

15.   The system for caller position management within a hold queue according to claim 11, further comprising:

        means for redeeming a portion of said advancement token for adjusting a position of said caller within said hold queue; and

        means for storing a remainder of said advancement token for said future call.

16.   The system for caller position management within a hold queue according to claim 11, wherein an expiration date is assigned to said advancement token.

17.   The system for caller position management within a hold queue according to claim 11, wherein said authenticated identifier for said caller is authenticated according to a voice identity of said caller.

18.   The system for caller position management within a hold queue according to claim 11, wherein said means for detecting an advancement token further comprises:

        means for detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points.

19.   The system for caller position management within a hold queue according to claim 11, wherein redemption of said advancement token advances said caller a particular number of waiting positions.

20.   The system for caller position management within a hold queue according to claim 11, wherein redemption of said advancement token advances said caller a particular amount of estimated wait time.

21.   A computer program product for caller position management within a hold queue comprising:

      a recording medium;

      means, recorded on said recording medium, for detecting an advancement token earned by a caller waiting in a hold queue; and

      means, recorded on said recording medium, for storing said advancement token for redemption in a future call by said caller according to an authenticated identifier for said caller, wherein future redemption of said advancement token will cause adjustment of a waiting position.

22.   The computer program product for caller position management within a hold queue according to claim 21, further comprising:

      means, recorded on said recording medium, for accessing a caller profile according to said authenticated identifier, wherein said caller profile comprises a previously earned advancement token; and

      means, recorded on said recording medium, means for offering said caller an option of redeeming said previously earned advancement token to adjust a position of said caller within said hold queue.

23.   The computer program product for caller position management within a hold queue according to claim 21, further comprising:

means, recorded on said recording medium, for storing said advancement token according to said authenticated identifier at a caller profile server accessible to a plurality of a call centers, wherein said advancement token is redeemable across a selection of said plurality of call centers for said future call.

24.   The computer program product for caller position management within a hold queue according to claim 21, further comprising:

means, recorded on said recording medium, for storing said advancement token according to said authenticated identifier at a caller profile server accessible to said hold queue, wherein said advancement token is only redeemable at said hold queue for said future call.

25.   The computer program product for caller position management within a hold queue according to claim 21, further comprising:

        means, recorded on said recording medium, for redeeming a portion of said advancement token for adjusting a position of said caller within said hold queue; and

        means, recorded on said recording medium, for storing a remainder of said advancement token for said future call.

26.   The computer program product for caller position management within a hold queue according to claim 21,

        means, recorded on said recording medium, for authenticating said identifier said call according to a voice identity of said caller.

27.   The computer program product for caller position management within a hold queue according to claim 21, further comprising:

        means, recorded on said recording medium, for detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points.

40. A method for call queue management of advancement tokens, comprising:

receiving a call from a caller at a hold queue, wherein an identity of said caller is authenticated;

accessing a caller profile according to said identity of said caller, wherein said caller profile comprises at least one previously earned advancement token; and

offering said caller an option of redeeming said previously earned advancement token for adjustment of a position of said caller in said hold queue.

41. A method for call queue management, comprising:

receiving a call from a caller at a hold queue, wherein an identity of said caller is authenticated;

detecting a characteristic of said caller for which an automatic advancement token is granted; and

automatically adjusting a position of said caller in said hold queue according to said automatic advancement token.

IX. Evidence Appendix

There is no evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner that is relied upon by Appellants in the appeal.

X. Related Proceedings Appendix

There are no decisions rendered by a court or the Board in any related appeals.